Refile: bankruptcy

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SEC. 108 RIGHT OF A VICTIM TO NOTICE AND TO BE HEARD ON THE ISSUE OF EXECUTIVE CLEMENCY

(a) IN GENERAL – Subchapter C of chapter 229 of title 18, United States Code, is amended by adding at the end the following:

"§ 3628. Notice to and consultation with victims about petitions for executive clemency"

"(a) DEFINITIONS. In this section,

"(1) the term "executive clemency" means any exercise by the President of the power to grant reprieves and pardons under clause 1 of section 2 of article II of the Constitution of the United States, and includes any pardon, commutation, reprieve, or remission of a fine; and

"(2) the term "victim" has the meaning given the term in section 503(e) of the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10607(e)); and

"(3) the term "interested party" means any person who (1) is a victim of an offense closely related to an offense for which executive clemency is under consideration; and (2) has requested "interested party" status from the Attorney General. Any person who requests to present his or her opinions on a particular petition for clemency to the Attorney General, or who requests to be informed regarding the status of a particular petition for clemency, is considered to have requested "interested party" status from the Attorney General as to that particular clemency petition.

"(b) REGULATIONS. Not later than 90 days after the date of the enactment of this Act, the Attorney General shall promulgate regulations to require the following procedures:

"(1) INVESTIGATIONS: If the President delegates to the Attorney General the responsibility of investigating or reviewing a potential grant of executive clemency in any particular matter or case, the Attorney General shall make reasonable efforts to determine the views, with respect to such matter or case, of:

"(A) the victims of each offense that is the subject of the potential grant of executive clemency;

"(B) interested parties; and

"(C) judicial and law enforcement officials, including the sentencing judge and prosecutors and investigating agents who had been involved in the investigation and prosecution of any offense that is the subject of the potential grant of executive clemency.

"(2) NOTIFICATIONS: If the President delegates to the Attorney General the responsibility of investigating or reviewing, in any particular matter or case, a potential grant of executive clemency, the Attorney General shall make reasonable efforts to notify the victims of each offense that is the subject of the potential grant of executive clemency, and any interested parties, of the following events, as soon as practicable after their occurrence:

"(A) the initiation by the Attorney General of an investigation or review of a potential grant of executive clemency in a particular matter;

"(B) the decision of the President to deny executive clemency in a particular matter;

"(C) the decision of the President to grant executive clemency in a particular matter, in which case such notifications shall be made, if practicable, prior to the release of any person from custody;

"(c) APPLICABILITY – Notwithstanding any other provision of this section, this section does not apply to any petition or other request for executive clemency that, in the judgment of the Attorney General, lacks sufficient merit to justify investigation or review, such as the contacting of a United States Attorney.

"(d) NO EFFECT ON OTHER ACTIONS – Nothing in this section shall be construed to require or prohibit the inclusion of any particular information in any report to the President that may be prepared by the Attorney General; or to affect the manner in which the Attorney General determines which petitions for executive clemency lack sufficient merit to warrant investigation or review.

"(e) REPORTING REQUIREMENTS
"(1) The Attorney General shall submit biannually to the Committees on the Judiciary of the House and the Senate of the United States Congress a report on executive clemency matters or cases delegated for review and/or investigation to the Attorney General by the President of the United States, including for each year:

"(A) the number of petitions so delegated;

"(B) the number of reports submitted to the President;

"(C) the number of petitions or requests for executive clemency granted and the number denied;

"(D) the name of each person whose petition or request for executive clemency was granted or denied and the offenses of conviction of that person for which executive clemency was granted or denied;

"(E) for any person granted executive clemency, an assessment of whether such person was able to provide assistance to law enforcement in the investigation or prosecution of another person, and, if so, a statement as to whether such assistance was sought and/or received; and

"(F) with respect to any person granted executive clemency, an assessment of the potential effect of such grant on the threat of terrorism or future criminal activity.

"(2) The failure of the Attorney General to comply in a particular case with the regulations required by section 2 does not create a cause of action in favor of any person."

TALKING IT OVER
BY HILLARY RODHAM CLINTON
RELEASE: WEDNESDAY, MAY 6, 1998, AND THEREAFTER

Over the past weeks, I've learned about proposed bankruptcy-reform legislation in the House of Representatives that could undermine the ability of some parents to collect child support. I have no quarrel with responsible bankruptcy reform, but I do quarrel with aspects of the bill that would force single parents to compete for their child support payments with big banks trying to collect credit card debt. The welfare of our children must come first.

Let me tell you about a hypothetical family: Jan and Simon have three children, ages 1, 3 and 5. Simon is the manager of a small shoe store with an annual salary of $33,000. Jan is a full-time homemaker.

Sadly, they divorce, and Simon agrees to pay child support. Unfortunately, within a year, he's involved in a serious car accident and loses his job. Jan, struggling to raise their three children, stops receiving child support checks. Unable to find work, and behind on his bills, Simon files for bankruptcy protection. Jan is just one of his creditors.

Under current bankruptcy law, Simon is obligated to pay his taxes, his student loans and his child support and alimony. But under the legislation being considered by the House, certain of his credit card debts would also be mandatory. In Simon's case, as parties vie in the fierce competition for limited funds, child support payments and credit card obligations would be pitted against each other.

Unfortunately, Jan and Simon's story is all too common. This year alone, 1.4 million families will file for protection from unmanageable consumer debt under our bankruptcy laws. This represents an increase of about 400 percent since 1980. While some reform is in order, any accompanying threat to child support and alimony payments is not.

This administration has worked too long and too hard to improve child support collection to see it now threatened. The President has cracked down on non-paying parents and strengthened enforcement. Since 1992, collections are up 68 percent.

Today, families that file under Chapter 7 are relieved of certain debts, but as in Simon's case, they must still repay others, including taxes, educational loans and family and child support obligations. Many also try to continue making home mortgage and car payments. They leave court relieved of some debt but certainly not debt-free.

The aspects of the House bill that concern me would elevate certain types of credit card debt to the same high priority as taxes, school loans and family support. The challenge for Congress is to pass a law that is balanced and fair to both the creditor and the debtor -- protecting families and children while reducing abuse of the bankruptcy laws.

The challenge for our economy is to preserve access to credit while making sure that eligible consumers are educated, responsible and protected from unscrupulous practices. It wasn't too long ago that large segments of our society were denied credit. At the time, it was important to provide people with this valuable economic tool, but now, as we all know, credit is readily available.

How many times in the past few months has your phone rung during dinner? You excuse yourself, leave the table and pick up the receiver, only to be greeted by a cheery voice on the other end of the line happily offering you a "pre-approved credit card." Or how many times have you seen or heard advertisements encouraging people with bad credit to borrow more?

For many people in financial straits -- for whatever reason -- such offers may sound too good to be true. Unfortunately, down the line, too many people find they didn't comprehend how much they would owe and don't have the means to repay the additional debt.

The average bankruptcy filer in this country earns less than $18,000 a year after taxes. And, now, credit card companies even target college and high school students.

Most people use their credit cards responsibly and pay their bills reliably. But, for many Americans -- like Jan and Simon -- the difference between fiscal security and financial ruin is just one calamity away. A divorce, a lost job, an accident or a child's illness can rob a family of its financial security and eventually lead to bankruptcy court.

As members of Congress grapple with bankruptcy reform, they must deal with the problems that face both creditors and debtors. But one issue is clear. Any effort to reform the bankruptcy system must protect the obligations of parents to support their children.

To find out more about Hillary Rodham Clinton and read her past columns, visit the Creators Syndicate web page at www.creators.com.

TALKING IT OVER
BY HILLARY RODHAM CLINTON
RELEASE: WEDNESDAY, SEPTEMBER 30, 1998, AND THEREAFTER

The vast majority of the 1.4 million Americans who will find themselves in bankruptcy court this year are not criminals or shady characters. They are nurses and secretaries, carpenters and teachers, bank tellers and grocery-store clerks. On average, they make less than $18,000 a year after taxes.

In other words, they are ordinary, hard-working Americans who want to pay their bills but who find themselves unable to manage, for reasons including the sudden illness of a child, a lost job and simply living too close to the financial edge.

Last May, I wrote about the flaws of bankruptcy reform legislation then under consideration by the House of Representatives -- legislation that could unfairly pit child support payments against credit card debt and fail to protect the poor, elderly and unwary from unscrupulous credit practices.

Unfortunately, despite some good faith efforts at improvement, the House proceeded to pass an unacceptable bill.

Bankruptcy reform is not easy. The challenge is to preserve access to credit, which is good for the economy, while curbing abuse and encouraging practices that help consumers live within their means.

The President supports reform that is both balanced and responsible. Debtors who have the genuine capacity to repay some of their debt should be required to do so, but abuses by creditors need to be stopped as well.

Thanks to the hard work of many legislators and advocates, the Senate has passed legislation, by a margin of 97 to 1, that goes a long way toward achieving the proper balance. Members of the Senate should be commended for taking the time and effort to reach a bipartisan resolution of some very tough issues. This week, when members of both houses sit down to reconcile the differences between the House and Senate versions, it is critical that this spirit of moderation prevail.

First, American consumers must not become the scapegoats of bankruptcy reform. Any reform must be even-handed, addressing the abuses of creditors as well as debtors.

One area demanding attention is called "reaffirmation," which occurs when a creditor, too often using threats or misinformation, convinces a debtor to agree to pay bills that could legally have been discharged in bankruptcy. One bankruptcy judge told me that when she reviewed her cases, she was astonished by the number of debtors who had agreed to reaffirm their unsecured debts even when it seemed to be against their best interests.

We must ensure that, in the future, any reaffirmation of unsecured debt is actually in the debtor's best interest and not the result of coercive practices on the part of the creditor.

In addition, the law must require that creditors give consumers more and better information about their loans. Many consumers don't understand that when they pay only the minimum balance on their bills, it may take years to pay them off and may dramatically increase the cost of their purchases.

Think of it this way: If you charge a big-screen TV for $2,500 on your credit card, figuring you will pay the typical monthly minimum charge at an average interest rate of 15.6 percent, it could take seven years to pay off the loan, and at the end of that time, you could have paid $4,200, almost double the original cost of the television. For many, the costs are even greater.

Similarly, consumers may not understand that, when they are offered a "pre-approved" credit card, the company has not determined whether they can afford additional debt. This kind of information must be provided with the 3 billion unsolicited credit cards that are offered to Americans each year.

Another critical concern is how to decide who will obtain bankruptcy relief. The Senate, appropriately, would put these decisions in the hands of bankruptcy judges, who have an opportunity to look at each individual's situation. The House would remove most of the court's discretion under a misguided standard that fails to take into account the differing needs of families or local variations in living expenses.

It is important to note that no one leaves bankruptcy court entirely debt-free. Certain debts are "nondischargeable," meaning the court cannot forgive them. An additional problem with the House bill is that it would create new categories of nondischargeable debt that after bankruptcy could, in some cases, pit credit card debt against alimony, child support, taxes and student loans.

The bottom line is this: This Administration supports bankruptcy reform but only if it is fair and balanced. Americans who can repay a portion of their debts must do so. But at the same time, consumers must fully understand the costs of credit, and America's families must be protected from coercion and other predatory creditor practices. I hope the members of Congress will follow the Senate's lead and pass reform the President can sign into law.

To find out more about Hillary Rodham Clinton and read her past columns, visit the Creators Syndicate web page at www.creators.com.

DRAFT #5

FIRST LADY HILLARY RODHAM CLINTON
OP-ED ON PENDING BANKRUPTCY REFORM LEGISLATION
JUNE 9, 1999

Last month on these pages, House Judiciary Committee Chairman, Henry Hyde, shared his concerns about bankruptcy reform legislation speeding its way through Congress. Although some might be surprised to find me on the same side of an issue as Mr. Hyde, when it comes to responsible bankruptcy reform, I am.

There is little dispute that our bankruptcy laws are in serious need of reform. Since 1980, bankruptcy filings have increased approximately 400 percent. Last year alone, more than 1.4 million American families filed for protection.

For over a year now, Congress has been considering the issue. But both the bill that was hurried through the House and the one that is moving rapidly to the Senate floor are seriously flawed, imposing unfair restrictions on middle- and low-income debtors while, at the same time, failing to close loopholes that protect the wealthy.

Consider for a moment the plight of workers who have lost their jobs due to changes in the economy and who are trying to get back on their feet.

Bankruptcy reform should not punish these hard-working Americans; but these bills would do just that.

Approximately 2.4 million workers lose their jobs each year because of plant closings and relocations or a declining demand for their skills. On top of lost income, they face additional expenses associated with retraining and looking for a new job.

Despite the fact that we should be encouraging workers – even those who file for bankruptcy protection – to update their skills and find new work, there is no provision in the proposed bills that would allow debtors to cover expenses for relocation or retraining before paying off other debts.

Americans who support elderly or disabled family members who are not dependents could also suffer under these bills. Consider an elderly widow who receives $9,000 a year in Social Security benefits, enabling her to pay rent and cover some household expenses. She may need another $5,000 from a son or daughter to help pay other household expenses or medical bills. But she would not qualify as a dependent, even though, without the added help, she might have to resort to Medicaid or move into an institution.

Under the proposals in Congress, debtors who help support aging or disabled relatives could be forced to pay credit card bills ahead of these very important expenses – an approach that is not only punitive, but also likely to lead to higher public assistance costs.

Victims of domestic abuse, many of whom incur unexpected expenses trying to protect themselves and their children from their abuser, would also not be protected by the House or Senate bills. In addition to everyday living expenses, they might find themselves having to pay to relocate, cover legal fees or install security measures in their homes.

Under the bills making their way through Congress, bankruptcy courts may not have the flexibility to take very important and relatively ordinary expenses such as these into account when determining what debtors can reasonably afford to pay their creditors. There is no question that debtors should repay whatever they reasonably can, but credit card companies should not come before elderly parents, women and children at risk of violence or unemployed workers trying to improve their financial circumstances.

While thousands of moderate and low- income debtors stand to be harmed by the House and Senate bills, coercive creditors who threaten or otherwise intimidate debtors into paying off debts that they otherwise would be entitled to discharge in bankruptcy, would not be affected at all.

Under current law, indivi[illegible] file for bankruptcy under Chapter 7 of the Bankruptcy Code, must [illegible] obligations that include taxes, educational loans and family and [illegible] support. But it is not uncommon for unscrupulous creditors to use har[illegible] and misinformation to coerce debtors to repay other obligation[illegible] credit card bills – first, leaving them without enough left over to [illegible] child support and alimony. The proposed bills would do nothing [illegible] such behavior.

In addition, the bills woul[illegible]g to limit the solicitation practices of credit card compani[illegible]ces that are clearly a factor in the explosion of bankruptcy filings. [illegible] all been targets of unsolicited credit over the phone or in the m[illegible] year credit card companies sent out more than 3.4 billion such o[illegible] high school and college students, who've never worked a[illegible] their lives, find themselves invited to accept a VISA or Mastercard, [illegible] to establish a credit history."

People with poor credit ar[illegible]barded by ads urging them to "consolidate their loans" or borr[illegible] For many people, especially those in financial straits, these offers s[illegible]ood to be true – and too often they are. Down the line, and o[illegible] debtors realize just how much they really owe and find themsel[illegible] to handle the additional debt.

The credit card companie [illegible] ing asked even to provide meaningful disclosure to prospe [illegible] ers – disclosure that might give them a realistic picture of what t [illegible] ing into and maybe make them think twice before digging them [illegible] deeper financial hole. Information on the true cost o [illegible] edit, the meaning of "pre-approved credit" and a creditor's [illegible] ize a debtor's purchases should be provided with every solicit [illegible]

Stories abound of high-inc [illegible] rs who file for bankruptcy protection but manage to hang o [illegible] assets such as luxury homes and racehorses. Yet, under these [illegible] hy debtors who can afford to take advantage of varying state [illegible] standards would still be able to shelter assets in states with lenie [illegible]

Average bankruptcy filers [illegible] an $18,000 a year. Most are ordinary, hard-working America [illegible] and secretaries, carpenters and teachers, bank tellers and groce [illegible] ks – who want to pay their bills but find themselves unable to m [illegible] ruptcy legislation should not place a greater responsibility for [illegible] ment on these debtors than it does on the wealthy.

Bankruptcy reform is not [illegible] s both desirable and necessary. This administration supports [illegible] balanced, asking both debtors and creditors act more respo[illegible] makers should, too. I urge the Senate to take a long, hard lo[illegible]es before it's too late.

[1040 words]

Column on Bankruptcy Reform
OUTLINE SUGGESTION

I. Lead such as "If you had told me a few months ago that I would write a column agreeing with Chairman of the House Judiciary Committee Henry Hyde, I wouldn't have believed it.

II. Open with bankruptcy reform and how some reform is in order – with the proliferation of bankruptcy filings over the past years.

III. Talk about how this bill has serious flaws that need to be addressed (see SAP). Something like, "I find myself thinking about those who this bill would hurt and those it would let off scot-free."

IV. Who this bill would hurt. Debtors in the following scenarios:

   A. Imagine a couple who takes care of his elderly mother. Although she receives Social Security and is not technically a dependent of her son, she relies heavily on the financial support her son provides, enabling her to stay in her small apartment.
   B. Imagine a woman who has been the victim of domestic violence and who is incurring unplanned expenses for a security system for her home, added transportation costs (had to move out of the house and now commutes further to work), or attorneys fees for a restraining order.
   C. Imagine a laid-off steel worker or an out-of-work farmer who is trying to get a better job and is enrolled in a job-training program to learn a new skill and advance.
   D. Imagine a couple who has been waiting years for an adoption to go through and incurs significant one-time expenses relating to that adoption, such as legal fees or transportation.

V. This bill could hurt these people because the new bankruptcy rules that these bills would create would mean that if any of these people found themselves seeking bankruptcy, the system would not be able to take into account any of their individual compelling circumstances in determining how much the debtor must repay. Background: the Means Test proposed in the pending House and Senate bills are rigid and use an IRS formula of expenses to determine how much a debtor can pay back to his/her creditors. These IRS standards were never meant to be used in this way (they were developed for tax-collecting purposes – rather they were meant to be used with significant discretion on the part of the IRS). Used in bankruptcy, they effectively determine how much a debtor is allowed to live on, while the balance of his/her income going to pay back debts, such as credit card debt. One of the problems with the rigid system is that because they don't take the *specific* circumstances of the debtor in mind and only tabulate certain allowable areas of expenses, they can be used to harm Americans who find themselves in unusual but sympathetic circumstances (see attachments for further discussion).

VI. Who this bill would not hurt.

A. Coercive creditors who scare debtors into reaffirming debt that they could otherwise discharge in bankruptcy (and the bill rolls back the only effective current remedy to these practices – class action suits, which help for instance to stop Sears)
B. Credit card companies who send out billions of credit card solicitation – they would not have to provide meaningful disclosure to consumers to ensure that they know what they are doing when they take on this debt. (i.e. the minimum payment disclosure requirement).
C. The rich -- who have loopholes to hide their wealth and protect it from creditors, by, for instance, buying a lavish home in certain states (see NYT opinion piece)

VII. Plea to fix the bill – hopes that when this measure is taken up by the Senate that they show leadership and address these important concerns.

ONE MORE THOUGHT – I'M NOT SURE WHERE TO PUT THIS:
I think it's important that somewhere in here she also mention that the problems of child support and alimony collection, while narrowed since last year's bill, have not been entirely fixed.